IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 16027 of 2004(G)

PETITIONER:

R.SARACHANDRA KUMAR,
S/O. RAJASEKHARA KURUP, AGED 45 YEARS, PRESENTLY WORKING AS LEGAL ASSISTANT, LAW DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.N.UNNIKRISHNAN.

RESPONDENTS:

1. **STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT., SECRETARIAT, THIRUVANANTHAPURAM.
2. **THE CHIEF ENGINEER,**
   PUBLIC WORKS DEPARTMENT, PUBLIC WORKS BUILDING, THIRUVANANTHAPURAM.
3. **THE CHIEF ENGINEER,**
   IRRIGATION AND ENGINEERING, PUBLIC WORKS DEPARTMENT THIRUVANANTHAPURAM.
4. **SHRI T.MURUKESAN,**
   MINOR IRRIGATION, SUB DIVISION, NEYYATTINKARA.
5. **SHRI S.SOMAN PILLAI,**
   PRESENTLY WORKING AS UPPER DIVISION CLERK, PUBLIC WORKS DEPARTMENT, NATIONAL HIGHWAY SUB DIVISION, THIRUVANANTHAPURAM.

W.P.(C). NO.16027/2004:

6. SHRI BABU G.JOHN,
UPPER DIVISION CLERK, IRRIGATION DEPARTMENT,
KALLADA IRRIGATION PROJECT, PUNALUR.

BY ADV. SRI.RAM MOHAN.G.,
SRI.G.P.SHINOD,
SRI.MANU V.,
SR.GOVERNMENT PLEADER SRI. V.T.K. MOHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.16027/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ED1-54498/86 DTD. 08/10/1986 ISSUED BY THE CHIEF ENGINEER (PWD), N.H. GENERAL, THIRUVANANTHAPURAM.

EXT.P.2: ORDER NO. I/SC (1)/85/SPL. CELL DTD. 02/08/1995 ISSUED BY THE CHIEF ENGINEER (GENERAL), PWD, ADMINISTRATION, THIRUVANANTHAPURAM.

EXT.P.2.A: COPY OF THE ORDER NO. ED1-13476/89 DTD. 25/10/1990 ISSUED BY THE SENIOR ADMINISTRATIVE OFFICE, O/O. THE CHIEF ENGINEER (PWD), R & B & ADMINISTRATION, THIRUVANANTHAPURAM.

EXT.P.2.B: COPY OF THE ORDER NO. ED1-23631/86 DTD. 27/10/1986 ISSUED BY THE ADMINISTRATIVE OFFICER, O/O. THE CHIEF ENGINEER (PWD) GENERAL, THIRUVANANTHAPURAM.

EXT.P.2.C: COPY OF THE ORDER NO. ED1-2305/89 DTD. 19/12/1989 ISSUED BY THE CHIEF ENGINEER (GENERAL), ROADS & BUILDINGS, THIRUVANANTHAPURAM.

EXT.P.3: COPY OF THE ORDER NO. ED1-13476/89/REVIEW DTD. 03/12/1990 ISSUED BY THE R.2.

EXT.P.3.A: COPY OF THE GAZETTE NOTIFICATION O. 20 DTD. 15/05/1990 ISSUED BY THE GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

EXT.P.4: COPY OF THE ORDER NO. SC2/07849/99/PW/SPL.CELL DTD. 26/02/2000 ISSUED BY THE R.2.

EXT.P.5: COPY OF THE ORDER NO. SC2/21473/99/PW/SPL.CELL DTD. 31/03/2000 ISSUED BY THE R.2.

EXT.P.6: COPY OF THE REPRESENTATION DTD. 16/02/1991 SUBMITTED BY THE PETITIONER TO THE R.2.

EXT.P.7: COPY OF THE LETTER NO. ED1-34487/94 DTD. 03/09/1994 ISSUED BY THE R.2. TO THE PETITIONER.

EXT.P.8: COPY OF THE LETTER NO. B2/25381/94 DTD. 18/08/1994 ISSUED BY THE R.2. TO THE PETITIONER.

EXT.P.9: COPY OF THE JUDGMENT DTD. 11/07/2002 IN O.P. NO. 16819 OF 1999-B PASSED BY THE HONOURABLE HIGH COURT OF KERALA, ERNAKULAM.

W.P.(C). NO.16027/2004:

EXT.P.10: COPY OF THE EXPLANATION DTD. 10/08/2002 SUBMITTED BY THE PETITIONER BEFORE THE R.2.

EXT.P.11: COPY OF THE ORDER G.O. (RT). NO. 433/03/PWD DTD. 07/05/2003 ISSUED BY THE GOVERNMENT OF KERALA, PUBLIC WORKS (B) DEPARTMENT, THIRUVANANTHAPURAM.

EXT.P.12: COPY OF THE LETTER NO. E2.7567/88 DTD. 22/06/1990 OF THE SUPERINTENDING ENGINEER, MINOR IRRIGATION CIRCLE, THIRUVANANTHAPURAM TO THE CHIEF ENGINEER (ADMN.) IRRIGATION, THIRUVANANTHAPURAM.

EXT.P.13: COPY OF THE COUNTER AFFIDAVIT DTD. 03/06/2000 IN O.P. 16819/1999-B FILED ON BEHALF OF THE R.1.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 16027 OF 2004-G

JUDGMENT

The petitioner has approached this Court, feeling aggrieved by the date of effect of his promotion to the cadre of Upper Division Clerk. He joined the erstwhile Public Works Department on 7.4.1984 as Lower Division Clerk. He completed the period of probation satisfactorily in 1986 and his probation was declared also. He cleared the obligatory departmental tests by 30.5.1989. But, he was promoted only with effect from 1.4.1990, the date on which the P.W.D was bifurcated into Public Works and Irrigation Departments. According to the petitioner, several of his unqualified juniors were given promotion on dates prior to his promotion. The detailed representation filed by the petitioner, pointing out these alleged irregularities in the promotion, which is produced as Ext.P10 in the amended writ petition was considered by the Government as per the direction issued by this Court in Ext.P9 judgment. The Government by Ext.P11 order dated 7.5.2003, rejected his claim, mainly holding that after 30.5.1989, the persons promoted before the date of promotion of the petitioner were

his seniors only. The seniors. who are test qualified, are entitled to get promotion as and when vacancies arise, it is stated in Ext.P11. It is also pointed out that those persons promoted prior to 30.5.1989, though juniors, have been promoted correctly. According to the Government, they were either having test exemption or actually have acquired the test qualification. Therefore, when vacancies arose before the acquisition of the test qualification by the petitioner, they were rightly promoted, it is submitted by the Government. This Writ Petition is filed, mainly challenging Ext.P11 and seeking consequential reliefs.

2. During the pendency of the writ petition, the 2nd respondent Chief Engineer issued order No.ED1-35666/2003 dated 19.2.2007. As per the said order, the promotions to the cadre of U.D. Clerk up to 1.4.1990 have been reviewed and revised. The petitioner has been granted promotion with retrospective effect from 26.9.1989. So, the grievance of the petitioner is substantially redressed. If the petitioner has got a specific case that any of his juniors were promoted between 30.5.1989 and 26.9.1989, he may point out the same by filing a representation before the 1st respondent along with a copy of this

judgment. In that event the said grievance raised by the petitioner shall be looked into and appropriate orders shall be passed on it by the Government within three months from the date of receipt of a copy of this judgment along with the representation.

3. The learned counsel for the petitioner submits that the benefits flowing from the promotion order dated 19.2.2007 have not, so far, been released to the petitioner. Though, this is not the subject-matter of the writ petition, the competent authority among respondents 1 to 3 shall settle the claim of the petitioner for consequential benefits arising out of the aforementioned promotion order dated 19.2.2007 and the benefits found due shall be released to him within two months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above.

17th July, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/